

**IN THE MATTER OF THE BOARD OF INQUIRY
INTO THE HOTEL QUARANTINE PROGRAM**

SUBMISSIONS OF THE HONOURABLE LISA NEVILLE MP

- 1 Thank you for the opportunity to make submissions in response to Counsel Assisting’s submissions (**CA submissions**) dated 17 November 2020.
- 2 Counsel Assisting submits at paragraphs 13 and 14 that, amongst others, Minister Neville was a person “in a position to disagree with the decision” to use private security in the Hotel Quarantine Program (**HQP**), that she was in a position “to be aware of potential suitability issues” and, by clear implication, that she ought to have disagreed with the decision to use private security and ought to have acted in respect of the “potential suitability issues”.
- 3 That submission, (and any such implication), is incorrect and should not be adopted by the Board of Inquiry. The submission fails to understand the Emergency Management structures in Victoria and who has responsibility for decision-making in the context of a Class 2 public health emergency.¹
- 4 As Counsel Assisting’s closing submissions on 26 September 2020 (**Closing Submissions**) correctly recognised, the HQP formed part of Victoria’s response to a human disease emergency, and it was therefore properly located within the formal Emergency Management structures, which meant that the Department of Health and Human Services (**DHHS**) was the control agency.² Within that framework, and consistent with Minister Neville’s evidence,³ “DJPR had a substantial role but DHHS was in control”.⁴
- 5 Minister Neville is not herself a public health expert, nor are there any public health experts who report either directly or indirectly to her as Minister for Police or otherwise. Public health experts operate within the purview of DHHS, for which the Minister for Health is responsible.

¹ As to which, see Minister Neville’s written statement at paragraphs 4, 6-15, 21-24, 30-33, 34, 48-50, 62-64 and 68 (**Statement**) and her oral evidence at pages T1944.3-1948.23, 1949.27-39, 1950.14-1951.2.

² Transcript 26 September 2020 at T2202.14 (**Closing Submissions**).

³ Statement at par 31 (**Statement**).

⁴ Closing Submissions at T2205.47-2206.1.

- 6 Questions as to the suitability of specific workforces for roles within the context of a quarantine program for a wildy infectious and novel virus are important operational questions of public health. Those questions fall squarely within the responsibility of DHHS, which employs public health experts with the knowledge and experience to answer them. They are not matters for determination by Victoria Police, much less the Minister for Police.
- 7 The whole point of Victoria's emergency management framework is to have one controller, one department and one Minister having ultimate control. Under that framework, for that health emergency at that time, and more specifically Operation Soteria, Minister Neville had no relevant responsibility or decision-making powers. It would have been contrary to that framework, and the legislation underpinning that framework for Minister Neville to seek to intervene in operational decisions. As section 10(2) of the *Victoria Police Act 2013* (Vic) makes clear, the Minister is prohibited from making any direction to the Chief Commissioner in relation to enforcement of the law, investigation or prosecution of offences, or operational decisions about the deployment of Victoria Police personnel.⁵ In addition, under section 5(2) of the *Emergency Management Act 1986* (Vic) the Minister is not responsible for operational matters in relation to emergency management. That Minister Neville was incidentally involved in a meeting where the use of private security was mentioned did not give her any role or responsibility to make operational decisions about the suitability of an aspect of the program.
- 8 Minister Neville's unchallenged evidence was that the use of private security was not raised for a decision, or for any particular input, by her⁶ and that she did not attend any meetings, receive any briefings or have any discussions between 27 and 29 March 2020 during which the proposed structure of lines of accountability for the HQP were discussed.⁷ The Minister's only involvement with the HQP on 27 March 2020 was, as described in her witness statement, attending a short, regular videoconference with Commissioner Crisp and Chief Commissioner Ashton, in which the fact that a HQP was being established was raised.

⁵ Transcript 23 September 2020 at T1947.28-38.

⁶ Statement at pars 40, 43.

⁷ Statement at par 44.

- 9 Contrary to the CA submissions, neither during the videoconference on 27 March 2020, nor at any later point, was Minister Neville “in a position to disagree with the decision” to use private security, and nor was she in a position “to be aware of”, enquire into or otherwise determine “potential suitability issues” that might arise when developing a HQP. Under the Emergency Management structures in Victoria, that was simply not her role. Minister Neville was not a member or invitee to the SCC planning meetings, which met at 4:30pm on 27 March 2020, and had no role at that meeting. Nor was she involved in any meeting of cabinet, a committee or sub-committee that had responsibility for making a decision about private security. No evidence was led during the course of the Board’s hearings to the contrary.
- 10 We are concerned that the Board’s focus on identifying the original source of the decision to use private security, and the premise of the CA submissions at [15] — that there was an “absence of a person with clear ownership of the decision to engage private security” — is not consistent with the clear role of DHHS as control agency. Wherever the inspiration originated, the decision to use private security, and responsibility for that decision “as time went on”,⁸ rested with DHHS under Victoria’s emergency management framework. The State Controller signed off on an operational plan that involved the use of private security and had ongoing responsibility as time went on to review that plan and ensure that it was appropriate.
- 11 If the emergency management framework was not properly implemented or understood, then Minister Neville — as Minister for Emergency Services — welcomes any findings or recommendations in that direction. But the “absence of a person with clear ownership of the decision” is simply inconsistent with the emergency management framework and should not be countenanced.
- 12 The proposition in [14] of the CA submissions appears to rest on a factual premise that is incorrect. Paragraph 14.1 states: “This was a *detention scheme*, not voluntary attendance at a public event”. However, the question is not whether private security was appropriate for a criminal law detention regime, but whether it was appropriate for use in a quarantine program for persons carrying a highly infectious virus. In contrast to paragraph 14.1, Counsel Assisting in the Closing Submissions correctly outlines: “this wasn’t a sporting event or another kind of voluntary activity where police and private

⁸ CA Submissions at par 15.

security worked together. This was an *infection prevention detention program*".⁹ In any event, as to this being a "detention scheme"¹⁰, we note that private security services are used in prisons and immigration detention facilities around the country. The references to certain events were intended to be illustrative, not exhaustive. As stated above, appropriateness of private security was a question for the State Controller having both the function and expertise to ensure the appropriateness of the model. It was not a matter about which it was relevant or appropriate for the Minister to have or express a "concern".

13 The CA submissions at paragraph 13 state:

"However, those who were in a position to disagree with the decision and to be aware of potential suitability issues, including Minister Neville, Commissioner Crisp, Mr. Ashton, and AC Grainger, were each aware of the potential for private security to be used and all acquiesced in it by either not objecting or by expressing a preference for the proposal".

14 It is submitted that this sentence contains several rolled-up propositions. First, it contends that there were certain persons who were in a position to disagree with *the decision* to use private security. Second, it contends that those persons were aware of *potential suitability issues* relating to private security. Third, it contends that those persons were aware of *the potential* for private security to be used. Fourth, it contends that those persons all acquiesced in the use of private security by either not objecting or expressing a preference for *the proposal*.

15 It is submitted that the position of Minister Neville should be considered separately. First, as explained at paragraph 9 above, she was clearly not "in a position to disagree with the decision" to use private security.

16 Second, she was not aware of the potential suitability issues in relation to private security. Suitability or appropriateness of the use of private security can only be tested at a particular point in time and in the context of particular circumstances. It is not possible to express a view about the appropriateness of the use of private security in a vacuum. The monitoring and evaluation of the suitability of private security need to be constantly reassessed over a period of time as the situation was evolving – it is not a one-off event. There was no model for hotel quarantine, including private security use, placed before Minister Neville at the 2pm information-sharing meeting. As stated by Counsel Assisting

⁹ Closing Submissions 26 September 2020 at T2212.4-8.

¹⁰ CA Submissions at par 14.1.

in the Closing Submissions “private security were engaged and no one *revisited* the suitability of them as the front line workforce until after the two outbreaks at Rydges and Stamford”¹¹ and “as the HQP *developed* and the roles allocated to private security *evolved* no one turned their mind to whether they *remained* a suitable workforce”.¹²

17 Third, as Minister Neville’s witness statement has made clear, she became aware of the potential for private security to be used at the 2pm information-sharing meeting. As she states in her oral evidence, the other two persons present at the 2pm meeting, Commissioner Crisp and Mr. Ashton, “were a bit ahead of me in terms of the level of knowledge that they actually had and it was at that meeting that I became aware of what I believe had been the case, that private security had been engaged”.¹³

18 Fourth, it is not the case that Minister Neville acquiesced in the use of private security by either not objecting or expressing a preference for it. Minister Neville was not in a position to make any judgement concerning private security at the regular daily meeting at 2pm at 27 March 2020. As stated above, there was no model for hotel quarantine, including the use of private security, provided at the 2pm meeting and no indication was given as to how the model would be implemented or developed. Minister Neville was not present nor an invitee at the SCC meeting at 4:30pm. At that meeting, as Counsel Assisting has indicated, “Victoria Police’s clear position was expressed, namely that private security would be, in its view or in its preference, the appropriate first line of enforcement”.¹⁴

19 As Counsel Assisting stated in the Closing Submissions:

“The Chief Commissioner of Police can’t be directed by anyone on operational matters. The police decide what they do in matters of this kind. So in those circumstances and in the context of this [SCC] meeting, the expression of a preference can readily be understood to be given the clear impression that police weren’t going to do it and there needed to be an alternative”.¹⁵

¹¹ Transcript 28 September 2020 at T2212.11-13.

¹² Transcript 28 September 2020 at T2212.16-18.

¹³ Transcript 23 September 2020 at T1951.25-29. As stated by Ms. Ellyard in her question to Minister Neville at T1951.31-32 “you mentioned that you had the sense that both of them, both Mr. Crisp and Mr. Ashton had more information than you did about the details of the program”.

¹⁴ Transcript 28 September 2020 at T2211.26-27.

¹⁵ Transcript 28 September 2020 at T2211.30-34.

- 20 As Minister Neville explained in her witness statement, at the 2pm meeting, neither Chief Commissioner Ashton nor Commissioner Crisp “raised any concerns about the use of private security guards”¹⁶. Nor did either of them express their preference to Minister Neville, as the expressed preference for private security was articulated only later at the 4:30pm SCC meeting, at which Minister Neville was not in attendance nor an invitee.
- 21 If the Board forms the view that the use of private security was not appropriate, and that someone should have had a concern, there were persons who should, by reason of their oversight function, role and expertise, have had, and expressed, such a concern. It is unclear why the Board now seeks to place that responsibility on Minister Neville, who did not have any such responsibility. It should be noted that the government acknowledged in July 2020 that there were problems with the program, and at that time, reset the program, removed private security and established its own dedicated workforce with significant involvement with Victoria Police.
- 22 Given Minister Neville (a) was not the Minister responsible for the control agency, (b) was not the Minister responsible for standing up or overseeing the HQP, (c) was not herself a public health expert, and (d) did not have any public health experts within any of her portfolio agencies or departments, it would have been inappropriate and irresponsible for Minister Neville to have involved herself in determining the structure of the Hotel Quarantine Program or the suitability of those involved in it.¹⁷
- 23 It is also inappropriate and unfair for the Board to consider making findings against the Minister in respect of matters that were not, but could have been, put to her when giving her evidence.

DATED: 24 November 2020

DR S MCNICOL QC
E NEKVAPIL
D PORTEOUS

¹⁶ Statement at par 64.
¹⁷ Statement at par 43.